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(kef)

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
AT CLEVELAND

IN RE:

Terry Weese AKA Terrence A Weese  
Renee Weese  
Debtors

Case No. 09-13100

Chapter 7  
Judge Pat E Morgenstern-Clarren

MOTION OF CITIMORTGAGE, INC.  
FOR ORDER ABANDONING REAL  
ESTATE (PROPERTY LOCATED AT  
10302 HOBART RD KIRTLAND, OH  
44094)

CitiMortgage, Inc. ( the "movant' ) moves this Court, under §§ 363, 554 and all other sections of the Bankruptcy Reform Act of 1978, as amended (the "Bankruptcy Code") and under Rule 6007 and other rules of the Federal Rules of the Bankruptcy Procedure (the "Bankruptcy Rules") for an Order for abandonment of the property under § 554 of the Bankruptcy Code. In support of this Motion, the movant states:

MEMORANDUM IN SUPPORT

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157 (b) (2). The venue of this case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

2. On December 13, 2006, the Debtors listed above (collectively, the "Debtors") obtained a loan from **AFS Financial, Inc.** in the amount

of \$125,000.00. Such loan was evidenced by a promissory note dated December 13, 2006 (the "Note"), as copy of which is attached hereto as Exhibit "A".

3. To secure payment of the Note and performance of the other terms contained in it, the Debtors executed a Mortgage dated December 13, 2006 (the "Security Agreement"). The Security Agreement granted a lien on the real property (the "Collateral") owned by the Debtors, located at 10302 Hobart Rd Kirtland, OH 44094, and more fully described in the Security Agreement.

4. The lien created by the Security Agreement was duly perfected by the filing of the Security Agreement in the Office of the Lake County Recorder on December 21, 2006. A copy of the Security Agreement is attached hereto as Exhibit "B". The lien is the 2<sup>nd</sup> lien on the Collateral.

5. The Note and Security Agreement were transferred as follows:

**The Note was transferred from AFS Financial, Inc. to CitiMortgage, Inc. as evidenced by the endorsement on the Note. See Exhibit A. The Mortgage was transferred from Mortgage Electronic Registration Systems, Inc. as nominee for AFS Financial, Inc. to CitiMortgage, Inc. as evidenced by the assignment recorded on August 11, 2009 as evidenced by the document attached hereto as Exhibit "C".**

6. The value of the Collateral is \$204,000.00. This valuation is based on the Debtors' Schedule D.

7. As of the date of this Motion, there is currently due and

owing on the Note the outstanding balance of \$135,378.09, plus interest accruing thereon at the rate of \$43.36 (per diem amount) per day from November 27, 2009.

8. Other parties who may have an interest in the Collateral are Chase Mortgage by virtue of a first Mortgage, upon which approximately due \$219,609.04.

9. The Movant is entitled to an order Abandoning the real estate under § 554 for these reasons:

Debtors have failed to provide adequate protection for the lien held by the Movant for the seasons set forth below.

**There is no equity in the property for the benefit of the unsecured creditors, the property is burdensome to the estate, and it is of inconsequential value and benefit for the estate.**

10. Movant has completed the worksheet attached as Exhibit "D".

11. 11. This Motion conforms to the standard form adopted in this District except as follows: See Paragraphs 5 and 9. Further, Movant seeks an Order granting Movant Abandonment of the Collateral pursuant to §554 of the Bankruptcy Code as the Collateral is of inconsequential value and benefit to the estate insofar as the Movant is owed \$135,378.09 as of November 26, 2009 on the Note, Chase Mortgage is owed, by virtue of a first Mortgage upon which the amount due is approximately \$219,609.04, and the value of the Collateral is

\$204,000.00 according to Debtors' Schedule D. 11 U.S.C. §554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." As such, Movant prays for an Order of Abandonment.

WHEREFORE, Movant requests that this Court enter an Order abandoning the subject real estate, and granting to Movant all other relief to which Movant may be entitled.

/s/ Edward J. Boll III

Edward J. Boll III

Bar Registration #0072982

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing Motion for Order Abandoning Real Estate of the secured creditor, CitiMortgage, Inc., was electronically transmitted on or about the December 1, 2009 via the Court's CM/ECF system to the following who are listed on the Court's Electronic Mail Notice list. Unless within fifteen (15) days after the date of the certificate of service a written responsive filing or memorandum in opposition is filed with the Court and served on the undersigned, Movant's Motion for Order Abandoning Real Estate may be granted without further notice or hearing.

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The undersigned certifies that a copy of the foregoing Motion for Order Abandoning Real Estate of the secured creditor, CitiMortgage, Inc., was transmitted on or about the December 1, 2009 via regular U.S. mail, postage pre-paid:

Terry Weese  
10302 Hobart Rd  
Kirtland, OH 44094

Renee Weese  
10302 Hobart Rd  
Kirtland, OH 44094

Chase Mortgage  
3415 Vision Drive  
Columbus, OH 43219

/s/ Edward J. Boll III

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